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CIV. APP 6/2000

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

NATIONAL INSURANCE COMPANY LIMITED — APPELLANT

AND

MOHSON TARRAF — RESPONDENT

CORAM: HON MR. JUSTICE S.C.E. WARNE — JSC (PRESIDING)
HON MR. JUSTICE M.E. T. THOMPSON — JA
HON MR. JUSTICE A.B. RASCHID — J

E.E.C. SHEARS -MOSES ESQ; with MS VIVIAN SOLOMON for APPELLANT

DR. A. RENNER-THOMAS with A. BANGURA ESQ; for RESPONDENT

JUDGMENT DELIVERED ON THE 18TH DAY OF DECEMBER, 2003

HON. MR. JUSTICE S.C.E. WARNE — JSC

This is an appeal against the Judgment of Stronge J. (as he then was) delivered on 12 April 2000. Against this judgment, the appellants have appealed on five grounds.

(I) That the Learned Trial Judge erred in finding that though the cover note was a contract between plaintiff and defendant the exclusion clause was not part of the contract and so the defendant cannot rely on the said exclusion clause.

(2) The Learned Trial Judge failed to consider the "war and civil war exclusion clause" in the circumstances of the alleged theft of 26th May 1997.

(3) The Learned trial Judge failed to consider adequately or at all the defendant's documentary evidence tendered in Court on behalf of the defendant but preferred to rely only on the oral evidence of the plaintiff.

(4) The Learned Trial Judge erred in ordering the exchange rate to be as on the day of the judgment.

(5) The Learned Trial Judge had no basis for ordering 12% in foreign currency.

FACTS On the 11th October 1996, the insured ,Mohson Tarraf took out an insurance policy with an Insurance Broker Roland J. Hamilton to cover the risk against Fire and Burglary. He paid the Broker the premium of 460 U.S. dollars for a period of one year, that is to say

from 11 October 1996 to 11th October 1997. In the interest of clarity, I will quote the receipt he received from Mr. Hamilton.

"RECEIPT

I, Roland J. Hamilton of R G H Insurance Broker, 139 Circular road Freetown receive the sum of USD 460.00 (Four Hundred & Sixty Dollars) being overseas Insurance (fire and burg-

glary) Insurance for the period 11th October 1996 to 11th October 1997.

Sign	Serial Nos. of U. S. D.
11 / 10 / 96	ACI041633A
	ACI0416835A
	ACI0416837A
	ACI0416900A
	A91437530B
	BO5082593D
	USD20-EKC12728E"

I see on the receipt the expression "Being Overseas Insurance" what the import of this expression and its implication for the insurance are, I would consider later. The insured entered into an insurance contract with the National Insurance Company Limited (hereinafter referred to as the Insurers) By virtue of a Proposal Form (1) for Burglary and House breaking and (2) for fire Insurance. These proposals cover the same period as that agreed between the Brokers R.J. Hamilton and the insured - that is to say 11th October 1996 to 11th October 1997.

The proposal form shows clearly that the value of the goods insured was 40,000 US Dollars.

This transaction becomes more interesting with the introduction of a third party - Harris and Dixon Insurance Brokers Limited Non-marine division. This company issued Cover Notes to the Insurers dated 2nd December 1996. This is about two and a half months after the proposals were effected and the payment of 460.00 US Dollars to the Brokers in Freetown had been made. The Cover Note FIN No. TR96063G to the Insurers states in small print.

"In accordance with your instructions we have effected Insurance / Reinsurance with underwriters on terms and

conditions detailed herein"

" It will be useful to spell out the contents of the Cover Note in full. judgment).

Having stated the relationship between the parties involved in the transaction, I will now examine the evidence which was before the learned trial judge.

Only two witnesses testified. insurers. The insured, Mohson Tarraf testifies that he arranged with one Insurance Broker, Mr. Roland J. Hamilton to have his goods in his store, known as Ashobi Store insured. The Insurance Broker, Mr. Hamilton and the Insured agreed on a premium of 460 US Dollars, which he paid. The witness said he did not receive any proposal. He was only told that he had effected the Insurance which will commence on 11 October 1996 for a period of one year. He said he did not receive any Insurance Policy but after three months Mr. Hamilton gave him a Cover Note - this was on the 1st of December 1996. The witness said it was addressed to the National Insurance Co. of Sierra Leone. The witness went on to say he had business with the National Insurance Company and was never told about the contents in the Cover Note. He asked for the insurance policy, he received none. The witness said he had never been told of the terms and conditions showed him by the brokers Hamilton. He continued that on the 26th May 1997 at about 2. a.m. he was called by telephone to be told that his store Ashobi store was being burgled. He went to his store and what he saw made him to collapse. He reported the matter to the police. The witness said he tried to contact the N. I. C., with no success; he tried to 4 (Included in the One on behalf of the insured and the other on behalf of the contact Hamilton, no success. He added that the stock on the 24th May 1997 was 40,000 U.S. Dollars. The witness said he subsequently made a claim to the N. I. C. through his solicitor who wrote three letters, which were tendered in evidence. He added that the N. I. C. did not honour his claim. He therefore claimed from the N. I. C. the sum of US40,000 plus interest from the date of loss to the date of payment. The witness in answer to cross examination said he filled out a proposal form and signed it. The witness said he had Exh. B, the Cover Note in his possession since 1st December 1996. He agreed that he did not complain about Exh. B.

The appellants called one witness. He was Mr. Dennis Patrick Lambert who testified that he was the Claims Manager for the National Insurance Company (S.L.) Ltd. He spelt out his duties which, inter alia, include handling claims and processing them and settling such claims where necessary. He said he knew an Insurance Broker by the name of R. J. H. Brokers and went on to say he did not know the plaintiff / respondent in this matter. He went on to say he received a notification of a Claim from R. J. H. Brokers in respect of the Respondent on the 8th October 1997. This notification was by way of a letter, which was tendered in evidence. The witness said he called R J H Brokers and informed them that the claim will not be honoured because of certain conditions in the Insurance Policy; and he added that these conditions related to War and Civil war conditions. The witness testified also that they placed original proposal with Harrison and Dickson (International Insurance Brokers) in London and that the company issued a cover Note to his company in respect of Ashobi stores. The witness went on to describe what a Cover Note is. He states "A Cover Note is a document normally issued to our client. On issue that client is notified whatever risk is proposed is covered There is a difference between a Cover Note and an Insurance Policy. A Cover Note is a document indicating that the Insurance contract is effective. An Insurance Policy gives details of the Insurance contract. On reinsurance, a Cover Note or a policy is issued to the insured." The witness went on to say that a Cover Note was issued to the plaintiff / respondent in which there is a war and Civil war exclusion clause and the sum insured was 20,000 US Dollars for risk of burglary and theft. He further said that the plaintiff / respondent's claim is in excess of the sum insured. In cross-examination, the witness admitted that his company did not 5 issue a Cover Note. In cross-examination the witness admitted that his company did not issue a Cover Note nor an Insurance Policy to the plaintiff /respondent. The witness said when the Cover Note is issued the policy becomes effective and the intention of the parties was that the Insurance should take effect on 11th October 1996. He added that the policy took effect on that date. The witness went on to say that Re-insurance took effect at the same time as the Insurance Policy. The witness agreed with Counsel that the exclusion clause referred to in the Cover Note is only contained in the

Cover Note, which was given to the plaintiff / respondent after the Insurance became effective.

In re-examination the witness had this to say. "For local Insurance the cover Note is handed to the Insured on the date the policy takes effect for external policies a Cover Note is also issued but the client is informed of the effective date of the policy. It was R J H which made the proposal on behalf of the plaintiff."

During the addresses, more particularly the address of Mr. Franklyn B. Kargbo Counsel for the Defendants / applicants, Dr. Renner-Thomas Counsel for the plaintiff / respondent sought an amendment on the Particulars of Claim by deleting No. TR9630630017 in paragraph, 3, of the Statement of Claim. Counsel promptly objected to the amendment on the grounds "that we have conducted ourselves on the basis of the pleadings we have closed our case and any amendment now will occasion an injustice"

The judge in his ruling stated:

> "Court: I do not see how the deletion of the
> number will do any injustice to the defendants.
> Objection overruled."

It is appropriate to state what is left of the paragraph which quote: "By a Cover Note Policy of Insurance the Defendant in consideration of the premium of USD40,OOO paid by the plaintiff the defendant agreed for a period of I year from 11th October 1996 to insure and indemnity. The plaintiff against 6 has been amended loss inter alia by theft and / or burglary of the plaintiff stock-in-trade at his said business, premises up to the value of USD 40,OOO.OO."

Can the Policy on which the claim is based be identified. I do not think so; but be that as it may, the Learned trial Judge made his findings on the sum total of the evidence before him. So it should be, and this Court will do the same and evaluate the evidence.

I will restate the ratio decidendi and the findings of the trial Judge. I quote: "The defendants rely on the above clause for exemption from liability; particularly Civil War. The defendants led no evidence to show that when the peril occurred there was a civil war, which directly or indirectly caused it. I hold that defendants cannot avail themselves of the exclusion clause. His Claim however, should be limited to USD20, 000 as 1st loss."

In the result I find in favour of the plaintiff and enter Judgment as follows "....."

The findings seem to be inconsistent with the ratio decidendi which the Learned trial Judge used in making his findings.

However, I will now consider the arguments of Counsel for the appellants. Ground (I) Mr. Shears-Moses, Counsel for Appellants submitted that the Insurers were not parties to the action, and that both parties were bound by exhibit "B' which is the Cover Note. He urged that there are no terms on Exhibits Gland G2, which form the proposal. He submits that Ex. A which is the receipt for payment of the premium and Exhibit Gland G2 were superseded by Ex. "B" which form the proposal. He further submitted that Ex. Gl and G2 were in no way part of the agreement.

Counsel submitted that Ex. C forms the contract between the parties and they are both bound by it, and they were also bound by all the clauses in Ex. B., and as a result, in view 7 " It as follows" of the military having seized power on 25 May 1997, the Court should uphold ground 1 of the appeal.

As regards grounds 2 and 3, counsel submitted that the incidence leading to the loss is one of the excepted perils. The peril excepted is as a result of the military usurpation of power, he added.

Counsel then referred to the case of Spinneys v. Royal Insurance Co. Ltd. 1 Lloyds L. R. (1980) 406 et seq. Counsel then addressed the Court on the doctrine of usurped power. He submitted that there was a de facto Government vide Ex. C. He argued that there was no

constructive treason. There was treason and refers to McGillivray's on Insurance 7th Edition page 790 para. 1893. He referred to the Military and usurped power. Counsel also referred to Spinneys case on the exclusion clause which he says applies p.407 Col. n p.408, p439 - p.440.

He submitted that the loss complained of was as result of the usurped power by the military therefore the claim should not have succeeded and there was no special cover which included insurrection or rebellion - vide 3 Halsburys Vol. 22. Page 328 para. 67 and where the perils are spelt out.

Counsel further submitted that there was a rebel war raging since 1991 and concluded that the learned trial Judge having failed to consider all the evidence, therefore erred in arriving at a just decision.

Counsel sought leave to abandon ground 4.

On ground 5 Counsel submitted that there was no evidence before the court for the Learned Judge to award 12% interest per annum in foreign currency and referred to two cases Williams v. George Pratt (176) 3 A.E.R. 599 and Civ.App.23/91 Commercial Enterprises v. Whitaker 16/2/2000 unreported.

Exh. B

2.8.171

11/11/98

STABLISHED 1797

Harris & Dixon Insurance Brokers Ltd
Non-Marine Division
21 New Street Bishopsgate London EC2M 1HH
Telephone 0171 294 1700
DX 538 London/City EC3
Telex 8811416 Hardix G
Facsimile 0171 623 9037 (Direct)
0171 283 3877 (Reinsurance)

National Insurance Company of Sierra Leon
E18/20 Walpole Street
P M B 84
Freetown
Sierra Leone

C/N No: TR9630636

COVER NOTE

ACCORDANCE WITH YOUR INSTRUCTIONS WE HAVE EFFECTED INSURANCE/REINSURANCE ITH UNDERWRITERS ON TERMS AND CONDITIONS AS DETAILED HEREIN.

LEASE EXAMINE THIS DOCUMENT CAREFULLY AND IF EITHER THE COVER OR SECURITY DOES OT COMPLY WITH YOUR REQUIREMENTS PLEASE ADVISE US IMMEDIATELY.

HIS COVER NOTE IS SUBJECT TO THE TERMS AND CONDITIONS, LIMITATIONS, EXCLUSIONS AND ARRANTIES OF THE POLICY OR AGREEMENT TO BE ISSUED.

OU ARE RESPECTFULLY REMINDED OF THE ONGOING IMPORTANCE OF DISCLOSING ALL ATERIAL INFORMATION TO INSURERS/REINSURERS. FAILURE TO DO SO COULD PREJUDICE OUR COVERAGE UNDER THIS INSURANCE/REINSURANCE.

28172

ESTABLISHED 1797

Harris & Dixon Insurance Brokers
NON MARINE DIVISION

National Insurance Company of Sierra Leon
E18/20 Walpole Street
P M B 84
Freetown
Sierra Leone

Cover Note Date: 2nd December 1996

IN ACCORDANCE WITH YOUR INSTRUCTIONS WE HAVE EFFECTED INSURANCE/REINSURANCE WITH UNDERWRITERS ON TERMS AND CONDITIONS AS DETAILED HEREIN

COVER NOTE

C/N No.: TR963063G

TR963063 0017

TYPE: FACULTATIVE FIRE, LIGHTNING, MALICIOUS DAMAGED, RIOT, STRIKE, CIVIL COMMOTION, TERRORISM, STORM, TEMPEST, BURSTING OF PIPES, WATER DAMAGE, IMPACT, LOOTING, THEFT AND/OR BURGLARY FOLLOWING VIOLENT AND FORCIBLE ENTRY OR EXIT REINSURANCE AS ORIGINAL.

FORM: As original and/or Slip Policy - Reinsurance

REINSURED: NATIONAL INSURANCE COMPANY LIMITED, FREETOWN, SIERRA LEONE.

INSURED: ASHOBI STORE, FREETOWN, SIERRA LEONE

PERIOD; 12 Months at 11th October, 1996

SUM INSURED:

Stock-in-Trade (Textile Materials) = USD 40,000.00

Burglary and/or Theft lst Loss = USD 20,000.00

CONDITIONS:

Full Reinsurance Clause (Retention: 30%)
War and Civil War Exclusion Clause (NMA 464)
Nuclear Energy Risks Exclusion Clause (NMA 1975A)

RATE:

Fire 6.5‰
Burglary/Theft 10‰

COMMISSION: 25%

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ATTACHING TO AND FORMING PART OF COVER NOTE TR963063G DATED 2ND DECEMBER 1996

ESTABLISHED 1797

INFORMATION:

CONSTRUCTION: Constructed of Concrete, roofed with concrete, lit by electricity. The Insured occupy the ground floor.

SECURITY: The Security of the premises is adequate with special built security and double locks with iron bars on each. Night watchmen.

LOCATION: 37 MALAMA THOMAS STREET
FREETOWN
SIERRA LEONE

National Insurance Company Limited facsimile dated 14th October, 1996 seen and noted.

ORDER HEREON: 70 %

SECURITY: As Per Attached Schedule

HARRIS & DIXON INSURANCE BROKERS LIMITED

Ian Bettrene

DIRECTOR

PLEASE EXAMINE THIS DOCUMENT CAREFULLY AND IF EITHER THE COVER OR SECURITY DOES NOT COMPLY WITH YOUR REQUIREMENTS, PLEASE ADVISE US IMMEDIATELY. THIS COVER NOTE IS SUBJECT TO THE TERMS AND CONDITIONS, LIMITATIONS AND WARRANTIES OF THE POLICY ADDENDUM OR AGREEMENT TO BE ISSUED. YOU ARE RESPECTFULLY REMINDED OF THE ONGOING IMPORTANCE OF DISCLOSING ALL MATERIAL INFORMATION TO INSURERS/REINSURERS. FAILURE TO DO SO COULD PREJUDICE YOUR COVERAGE UNDER THIS INSURANCE/REINSURANCE.

ESTABLISHED 1797

ATTACHING TO AND FORMING PART OF COVER NOTE TR963063G DATED 2ND DECEMBER 1996

SCHEDULE OF SECURITY

SEVERAL LIABILITY NOTICE

The subscribing reinsurers' obligations under contracts of reinsurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing reinsurers are not responsible for the subscription of any co-subscribing reinsurer who for any reason does not satisfy all or part of its obligations

SCHEDULE OF INSURERS/REINSURERS:
(LINES PERCENTAGE OF ORDER HEREON) :-

100.00%	Assicurazioni Generali S.P.A., London
100.00%	Of Order Hereon

SECURITY HEREON GIVE NOTICE OF CANCELLATION AT 10TH OCTOBER 1997

FULL REINSURANCE CLAUSE

Being a Reinsurance of and warranted same gross rate, terms and conditions as and to follow the settlements of the Reassured and that the Reassured retains during the currency of this Reinsurance at least the amount stated as the retention on the identical subject matter and risk and in identically the same proportion on each separate part thereof but in the event of the retention being less than that stated the Reinsurers lines to be proportionately reduced.

WAR AND CIVIL WAR EXCLUSION CLAUSE

(Approved by Lloyd's Underwriters' Non-Marine Association)

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

1/1/38
N.M.A. 464

NUCLEAR ENERGY RISKS EXCLUSION CLAUSE (REINSURANCE) (1994). (WORLDWIDE EXCLUDING U.S.A. & CANADA)

This agreement shall exclude Nuclear Energy Risks whether such risks are written directly and or by way of reinsurance and/or via Pools and/or Associations.

For all purposes of this agreement Nuclear Energy Risks shall mean all first party and/or third party insurances or reinsurances (other than Workers' Compensation and Employers' Liability) in respect of:-

(I) All **Property** on the site of a nuclear power station.
Nuclear Reactors, reactor buildings and plant and equipment therein on any site other than a nuclear power station.

(II) All **Property**, on any site (including but not limited to the sites referred to in (I) above) used or having been used for:-

(a) The generation of nuclear energy; or

(b) The **Production, Use or Storage of Nuclear Material**.

(III) Any other **Property** eligible for insurance by the relevant local Nuclear Insurance Pool and/or Association but only to the extent of the requirements of that local Pool and/or Association.

(IV) The supply of goods and services to any of the sites, described in (I) to (III) above, unless such insurances or reinsurances shall exclude the perils of irradiation and contamination by Nuclear Material.

Except as undernoted, Nuclear Energy Risks shall not include:-

(i) Any insurance or reinsurance in respect of the construction or erection or installation or replacement or repair or maintenance or decommissioning of Property as described in (I) to (III) above (including contractors' plant and equipment);

(ii) Any Machinery Breakdown or other Engineering insurance or reinsurance not coming within the scope of (i) above;

Provided always that such insurance or reinsurance shall exclude the perils or irradiation and contamination by Nuclear **Material**.

However, the above exemption shall not extend to:-

(1) The provision of any insurance or reinsurance whatsoever in respect of:-

(a) **Nuclear Material;**

(b) Any **Property** in the **High Radioactivity Zone or Area** of any *Nuclear Installation* as from the introduction of *Nuclear Material* or - for reactor installations - as from fuel loading or first criticality where so agreed with the relevant local Nuclear Insurance Pool and/or Association.

(2) The provision of any insurance or reinsurance for the undernoted perils:-

- Fire, lightning, explosion;
- Earthquake;
- Aircraft and other aerial devices or articles dropped therefrom;
- Irradiation and radioactive contamination;
- Any other peril insured by the relevant local Nuclear Insurance Pool and/or Association;

in respect of any other Property not specified in (1) above which directly involves the Production, Use or Storage of Nuclear Material as from the introduction of Nuclear Material into such Property.

Definitions

"Nuclear Material" means:-

(i) Nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a Nuclear Reactor, either alone or in combination with some other material; and

(ii) Radioactive Products or Waste.

"Radioactive Products or Waste" means any radioactive material produced in , or any material made radioactive by exposure to the radiation incidental to the production or utilisation of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.

"Nuclear Installation" means:-

(i) Any Nuclear Reactor;

(ii) Any factory using nuclear fuel for the production of Nuclear Material, or any factory for the processing of Nuclear Material, including any factory for the reprocessing of irradiated nuclear fuel; and

(iii) Any facility where Nuclear Material is stored, other than storage incidental to the carriage of such material.

"Nuclear Reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.

"Production, Use of Storage of Nuclear Material" means the production, manufacture, enrichment, conditioning, processing, use, storage, handling and disposal of Nuclear Material.

"Property" shall mean all land, buildings, structures, plant, equipment, vehicles, contents (including but not limited to liquids and gases) and all materials of whatever description whether fixed or not.

"High Radioactivity Zone or Area" means:-

(i) For nuclear power stations and Nuclear Reactors, the vessel or structure which immediately contains the core (including its supports and shrouding) and all the contents thereof, the fuel elements, the control rods and the irradiated fuel store; and

(ii) Fore non-reactor Nuclear Installations, any area where the level of radioactivity requires the provision of a biological shield.

Counsel finally prayed that in view of the various submissions the appeal should be allowed, judgment of High Court set aside with consequential orders, since monies had been paid.

Dr. Renner-Thomas, I Counsel for the respondent submitted that the contention in this matter is that the appellants are not entitled to rely on the exclusion clause to limit or exclude liability. He went on to say the amount stated in Ex. B for Burglary and Theft is limited to 20,000 US Dollars and submitted that this clause is to limit liability. Counsel particularly referred to page 6 of Ex. B and the effect; he added, is to extinguish liability entirely. Counsel added that the key question to decide is whether Ex. B and the exclusion clause contained therein are part of the contract between the Respondent and the National Insurance Company, the appellants.

In my view, this is the gravamen of this appeal.

However, Counsel submitted that neither cover Note, a fortiori, forms part of the contract between the appellants and the respondent. Be that as it may, this is not the only issue in this appeal. Counsel submitted that the Cover Note was issued to the appellants; the original contract between the appellants and respondent came into force on 11 October 1996, he added. Counsel referred to the proposal form Ex. G 1 & G2 and its effect and submitted that this was the contract between Appellants and Respondent - except in Marine Insurance they need not issue a policy. The fact that there was no policy does not detract from the fact that the contract came into existence by Ex. G 1 and G2. Counsel submitted further that the appellants did not contract for the underwriters and that there is nothing in Ex. G 1 and G2 to show that they were agents. Counsel questioned the status of Ex. B, the Cover Note and then referred to the evidence of D. W. 1 page 46 line 15 to page 48 line 1 and the cross examination on page 49 line 23 - page 48 line 6. Counsel submitted further that the evidence of D. W. 1 binds the National Insurance Company. The respondent had no business with the appellants, he added. Consequently when respondent wrote to the Reinsurers they ignored him.

Counsel submitted the following:

That the until Ex. D was issued it was the first time that the position was made clear that the appellants defended the action as principals in their own right. That the appellants have not disclosed any event in the exception clause.

That they have not discharged the burden on them.

That Ex. B had nothing to do with the respondent. That the Cover Note is only Insurance Cover Note binding the National Insurance company and the Overseas Party. Counsel referred to liability on contract in support of his submission, page 313 paragraph 687 - Rubric. Time of Notice parties to be bound before or at the time the contract is made - No effect if communicated later. Vide Olley v. Marlborough (1949) 1 AER pp. 127 - 134, Denning L.J., Counsel went on to submit that even if these conditions were binding on the respondent, the appellants have not discharged the burden which lies on them that the loss clause falls within one or both of the exception clauses Counsel referred to Ivamy General Principles of Insurance Law pp. 393 -395. This points out on whom lies the burden of proof and the degree of proof required whether the loss falls within the exception Vide Motor Union Insurance v. Boggan (1923) 1 A E. R. 331 A. L. 332 Birken head.

Counsel added that this was a case of an ordinary burglary. This was not a theft that was as a result of a coup. Vide page 41 Line 26 to page 42 et seq.

: In continuing his submission Counsel had this to say:

that he was not contending that there was no usurpation of power, but that the appellants have not shown a casual link between what happened in 1997 and the theft. I will quote have not shown a Counsel when he said: "They have only shown snippets of circumstantial evidence - The circumstances can be consistent with the usurpation of power or military usurping as with ordinary burglary." Counsel submitted that the circumstance of the theft should be considered and this must be contrasted with Spinney's case last paragraph

sation. Counsel added that there ought to be positive /affirmative evidence of causation vide Ex. F. Counsel submitted that it would be wrong to draw the inference that the theft was as the result of a coup.

Counsel made the following submissions further: that in reply to Ex. E, Ex. D2 was sent and a reminder was sent, Ex. D3, and this was the state of things until pleadings were closed. That the Judgment is not impeccable and that is why the respondent is asking for Court to vary the judgment for the several reasons stated above and to hold that this cannot be limited to 20,OOOUSD and should be varied pursuant to Rule 31 of Court of Appeal Rules of 1985 so as to allow the respondent to recover the sum of 40,OOOUSD.

On ground 5 Counsel has referred to the case of Milandes v. Frank textile Ltd. (1976) 3 AER 599 Bristow J. That is to sayan award cannot be made in foreign currency unless expert evidence has been led. Counsel submitted that the Judge did not award interest in foreign currency Vide: Page 68 line 20 to the end. Prayer is section 4 (1) of Cap. 19 and section 3(1) OF THE Law Reform (Miscellaneous Provisions) Act 1934.

That based upon the decision of this Court - Ms Sylt v. Universal Overseas Civ.App.3 and 4 of 1990 Commercial Enterprises and another V. Donald Macauley Civ. App.23/91 (unreported) Counsel submitted that in both cases Court upheld interest on dollar judgment without hearing expert evidence.

Counsel submitted that if appellants choose to satisfy the judgment of the Court below, they will only pay 12%; the Court disagrees, the matter should be referred back for assessment.

Counsel concluded by inviting the Court to vary the judgment from 20,000USD to 40 000 USD.

Counsel for the appellants replied to the several points raised in the submissions of Counsel for the respondent. He finally submitted that upon the submissions of the appellants the

should be allowed on all grounds, aside.

The appellants are urging the Court to set aside the judgment of the Court below and the respondent is seeking not only that the Judgment be upheld but that it be varied.

The Respondent who was the plaintiff in the Court below, avers in his statement of claim the following:

> "The plaintiffs claim against the Defendant is for the sum of USD.40, 000.00 being the sum due under a Policy of Insurance issued by the Defendant against loss of the Plaintiff stock-in-trade by burglary and / or theft intrust thereon and costs under particulars.

In the Respondent's pleadings, it states:

> "By Cover Note/Policy of Insurance No. TR9630630017 the defendant in consideration of the premium of USD.460/00 paid by the plaintiff the Defendant agreed for a period of 1 year from 11th October 1996 to insure and indemnify the plaintiff against loss inter alia by theft and or burglary of the plaintiff's stock - in - trade at his said business premises up to the value of USD. 40,000."

During the hearing of the matter, Dr. Renner-Thomas, Counsel for Plaintiff / respondent applied for an amendment of paragraph 3 of the particulars of claim by deleting the No. TR9630639.

Mr. Kargbo, Counsel. for the Defendant in the Court below had this to say:

> "My Lord I object to the application on the grounds that we have conducted ourselves on the basis of the pleadings. We have closed our case and any amendment not will occasion an injustice."

Court: I do not see how the deletion of the number will do any injustice to the defendant. Objection overruled."

The case proceeded after this amendment. The document having that number was tendered as Exhibit B. That is to say the Cover Note, which was issued by the Reinsurers.
No where in the Judgment did the Learned Trial refer to this amendment nor did he to have adverted his mind to this point.

On what basis then did the Learned Trial Judge base his judgment? I presume it must be on what is left of the pleadings and the viva voce and documentary evidence. It would appear that the respondent is approbating and reprobating if the respondent is arguing that he is not bound by Ex B then his claim cannot be based on Ex B.

The judgment therefore is flawed to the extent that it did not take cognizance of the amendment of paragraph 3 of the Statement of Claim by deleting the number TR9630639.

Be that as it may, the proceedings before the Court of Appeal being a re-hearing, the Court can and will address all the issues which were before the Trial Judge.

These are the principles upon which a Court of Appeal Acts: On an appeal in an action tried by a Judge alone, the burden of showing that the trial Judge was wrong in his decision as to the facts lies upon the Appellant, and if the Court of Appeal is not satisfied that he was wrong, the appeal will be dismissed. However, as was said by Lindley M.R. in Coghlan v. Cumberland (1898) 1 On 204 "Even where.....the appeal turns on a question of fact, the court has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the Judge, with such other materials as it may have decided to admit. The court must then make up its own mind, now disregarding the judgment appealed from but carefully weighing and considering it, and not shrinking from overruling it if on full consideration it came to the conclusion that it is wrong." Even though the Learned M.R. did not exhaust all the points the Court of Appeal must consider in the rehearing of the case, I will adopt the principles he has stated.

In the celebrated case of Bammax V. Austin Motor Co. Ltd. (1955) 1 A.E.R. at 326, Lord

Simonds at page 327 said "The Judge sees the demeanour of the witness and can estimate them intelligence, position and character not open to the courts who deal with later stages of the case."

The Head note states: "An appellate court, on an appeal from a case tried before a Judge above should not lightly differ from a finding of the Trial Judge on a question of fact, but a distinction in this respect must be drawn between the perception of facts and the evaluation of the facts where there is no question of the credibility of witness as, but the sole question is the proper inference to be drawn from specific facts, an appellate court is in as good a position to evaluate the evidence as the trial Judge, and should form its own independent opinion, though it will give weight to the opinion of the trial Judge.

On the totality of the evidence I have no reason to doubt the credibility of the witness.

Having said the foregoing, I will now consider the case from its inception.

How did the Appellants and the Respondent come into contact. The Respondent approached the Appellant to secure an insurance cover for the goods in his shop against certain risks.

For this purpose, the Respondent approached an insurance broker one Mr. Rowland. J. Hamilton of 139 Circular Road Freetown to effect this purpose. He paid Mr. Hamilton USD.460 to cover the risk. He was issued a receipt which was tendered as Exh. A. I believe it will be appropriate to recite the contents of the receipt. I quote -"

> "I Rowland J. Hamilton of RJH Insurance Broker, 139 Circular Road, Freetown receive the sum of USD.460.00 (Four Hundred and Sixty Dollars) being Overseas Insurance (Fire and Burglary) Premium for the period 11th October 1996 to 11th October 1997.....
> .....
> .....
> 11/10/96."

In the receipt I have emphasized:

> "Being Overseas Insurance" Why was this mentioned in the receipt? Did the Broker indicate or notify the respondent that the transaction will not be limited to the Local Company, that is to say the appellants. I shall consider this point in due course.
>
> Subsequently, the Respondent was given a proposal form issued by the Appellants which he duly completed and tendered as Exh. G 1 - G2. This proposal form is for the value of property insured at USD.40, 000 and it is dated 11/10/96. This is the same date as that on the receipt Exh. "A". The proposal is for Burglary and House Breaking Insurance Trade Premises. In my view, this is the contract between the Appellants and the Respondent. In his evidence, the respondent said, three months later, he received a Cover Note from Mr. Hamilton which he tendered in evidence as Ex. "B'.
>
> On examination of Exh."B' it is addressed to the Appellants and it is dated 2nd December 1996.
>
> The Cover Note Exh. B is numbered C / N No. TR 9630639 and there is yet another number which is TR9630630017. This Cover Note, Exh. B is a contract between the Appellants and Harris and Dixon Insurance Brokers Ltd. Non Marine Division.
>
> It is for a 12 months period. As a result of this Cover Note the appellants are invoking the exclusion clause under "War and Civil war exclusion Clause."

Is the Respondent bound by this Cover Note Exh. B., I do not think so. The proposal Form, Ex. G1 –G2 was what the respondent submitted to the Appellants for processing the Insurance. The proposal, is a Standard Printed form which was issued to the Respondent by the appellants.

It is my view that this proposal form would contain such a statement of the particulars of the insurance policy which should state in clear and unambiguous language any particular event, by which the insurers would escape liability. It has been much established over the

years rules which are applicable to proposals. Let me emphasize that these proposal forms are printed forms made by the Insurance Companies.

The rules herein are:

(1) If a fair and reasonable construction must be put upon the language of the question which is asked and the answer given will similarly be construed Vide Revel v. London General Insurance Co. (1934) all E. R. Rep.744.

(2) No excuse will be accepted for being careless or perpetrating slips of the pen unless of course the error is so obvious that no one could be regarded as mislead. If the proposer puts "No" when he means "Yes" it will not avail him to say it was a slip of the pen, the answer is plainly the reverse of the truth.

(3) An answer which is literally accurate, so far as it

(4) extends, will not suffice if it is misleading by reason of what is not stated-vide Re General Provincial (Life Assurance Co. (1870) 18 W.R. 396. London Assurance v. Mansell (1870) 11 C.D. 363.

I have gone through the Proposal fonn Ex.G 1 and G2 and I have seen no clause that is equivocal or ambiguous. There was no policy issued after the proposal had been submitted. What purports to be a policy is a Cover Note Ex. B, which in fact is a Reinsurance Cover Note. There is not clause in the proposal which covenanted that the respondent shall be bound by the provision in the Reinsurance Cover Note.

There is no clause in the proposal which covenanted that the respondent shall be bound by the provision in the Reinsurance Cover Note.

The appellants are asking that the provision contained in Exhibit "B" which is the Cover Note be involved and reads under the heading "WAR AND CIVIL WAR ECCLUSION CLAUSE – (Approved by Lloyd's Underwriters, Non-Marine Association).

"Notwithstanding anything to contrary contained herein this policy does not cover loss or damage directly or indirectly occasioned by, happening through or in consequence of War, invasion, acts of foreign enemies, hostilities (whether war be declared or not) Civil War, rebellion revolution, insurrection military or usurped power or confiscation of Nationaliza tion or requisition or destruction of or damage to property by or under the Order of any government or public or local authority — "emphasis mine).

Assuming that the Respondent was bound by exhibit B, the Cover Note, there was no evidence that any of the events underlined above took place which led to the loss or damage of the Respondents property. The only evidence the Appellants led was that of D. W. I. Dennis Patrick Lambert.

He testified this:

> "My company placed Exhibit "G" with Harrison and Dickson International bankers in London. That Company issued a Cover Note Exhibit "B" to my Company in respect of Ashobi Stores. A Cover Note is a document normally issued to our clients. On issue that client is notified that what risk is proposed is covered. There is a difference between a Cover Note and Insurance Policy."

A Cover Note is a document that the Insurance contract is effective.
An insurance Policy gives details of the Insurance to be insured. A Cover Note was issued to the plaintiff, which is Exhibit "B" in which there is a War and Civil war and Exclusion clause."

I repeat, there was no evidence to show that there was a War or a Civil War.

The receipt issued by the broker which was tendered as Ex. A. did have a phrase "Being Overseas Insurance (Fire & Burglary)" This phrase is so vague that it is not worth the paper it is written on.

In my view, for a condition precedent to be binding it ought to be clearly stated in the pro-

posal. Conditions precedent which are so different on the Cover Note or Policy than those on the proposal ought to be construed against the insurers.

The Cover Note or Policy as well as the proposals are all prepared and printed by the Insurers. In many cases the insured has very little say in what the conditions of the Insurance are. The instant case is clearly one in which the conditions in the proposal are different from those on the Cover Note. That being the case, the respondent is not bound by the conditions on the Cover Note Exh. B. I will in due course deal with the issue of the Reinsurance. However, I will refer to the case of Re Bradley and Essex and Suffolk Accident Indemnity society, Ltd., in which the conditions precedent were not clearly stated in the proposal. In that case (Fletcher Moulton L. J. dissenting) it was held that "a policy of that nature, in case of ambiguity or doubt, ought to be construed against the society, and in favour of the insured.

" The facts in the above case were:

"In March, 1908, the insured effected a policy of insurance with an insurance society against his liability under (inter alia) the Workmen's Compensation act, 1906, the consideration for the policy being the payment of a provision of 105 per cent per annum on the amount if the wages paid by the insured to his employees. The policy contained various conditions which were declared by the policy to be conditions precedent to liability there under. Condition 5 was as follows:

"The first premium and all renewable provisions that may be accepted are to be regulated by the amount of wages and salaries and other earnings paid to the employees by the insured during such period of insurance. The name of every employee and the amount of ? wages, salary and other earnings paid to him shall be recorded in a proper wages book. The insured shall at all times allow the society to inspect such books, and shall supply with a correct account of all such wage and other earnings paid during an period of insurance within one month from the expiry of such period of insurance", and if the total amount so paid should differ from the currency of the policy. Compensation under the Act of 1906 became payable

to him by the insured, who claimed from the society under the policy. The society, however, refused to pay on the ground that insured had not complied with the condition that name and wages of every employee should be duly recorded in a proper wages- book. Held (Fletcher Moulton L. J. dissenting). "a policy of that nature, in case of ambiguity or doubt, ought to be construed against the society and in favour of the insured".

In the majority judgment Farwell L. J. said "It is incumbent on insurers to put clearly on the proposal form the acts which the assured is by policy to covenant to perform and to make clear in the policy the conditions, non-performance of which will entail the loss of all benefit of the insurance. It is scarcely honest to induce a man to propose on certain terms and then to accept the proposal and send a policy as in accordance with it when such policy contains numerous provisions not mentioned in the proposal which operate to defeat any claim under the policy, and all the more so when such provisions are concluded in obscure terms."

I entirely agree with the principle of law stated by the Learned Lord Justice and I adopt it entirely.

In the judgment by Farewell L. J. He said - "contracts of Insurance are contracts in which uberrimae Fides is required not only from the assured but also from the Company insuring. It is the universal practice for companies to prepare both forms of proposal and the form of policy. Both are issued by them on printed forms kept ready for use. It is their duty to make the policy accord with and not exceed the proposal, and to express both in clear and unambiguous terms, lest, as Fletcher Moulton L. J. says, quoting Lord St Leonards in Joel Law Union and Crown Insurance Co. (1908)2 K. B. at p. 888 provisions should not be introduced into policies which "unless they are fully explained to the parties will lead a vast number of persons to suppose that they have made a provision for their families by an insurance on their lives, and by payment of perhaps a very considerable portion of their income, when in point of fact from the very commencement the policy was not worth the pa-

per on which it was written." I agree. In the instant case, the conditions in the proposal form are quite different from those in the e. Cover Not Exh. B. In my view those on the Cover Note are unconscionable.

The Cover Note is addressed to the National Insurance Company of Sierra Leone who are the appellants herein.

The Cover Note States:

"In accordance with your instructions we have with underwriters on tenus and Conditions as detailed herein.

Please examine this document carefully, and if either the comply with your requirements please advise us immediately. The Cover Note is subject to the terms and Conditions; warranties of the policy or agreement to be issued.

You are reminded of the ongoing importance of disclosing all material information to insurers/reinsurers. Failure to do so could prejudice Insurance / Reinsurance."

The above statements were addressed to the Appellants.
In the same Cover Note, there is this entry:

"Reinsured: National Insurance Company Limited, Freetown Sierra Leone.

Insured: Ashobi Store, Freetown Sierra Leone.

Period: 12 months at 11 October 1996

Sum Insured Stock-in-trade (Textile Materials) = U.S.D. 40,000 Burglary and / or Theft 1st loss = U.S.D.20, 000."

All these terms and conditions have not been indicated or printed in the proposal.

In the Cover Note there is also printed in bold letters:

"WAR AND CIVIL WAS EXCLUSION CLAUSE

Under this bold print we find stated (Approved by Lloyd's Underwriters: Non-Marine Association) "Notwithstanding anything to the contrary contained herein this policy does not cover loss or damage directly or indirectly occasioned by happening through or in consequence of war, invoice, acts of foreign hostilities (whether war be declared or not), civil rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition of or damage to property by or under the order of any government or public or local authority.

This exclusion clause is all embracing and leaves no room for misunderstanding. Regrettably it - is not a condition precedent in the proposal. In a situation like this, the law states that the insured is not bound by such a clause. I will refer to the judgment of Farwell L. J. in the case of Re. Bradley mentioned above when he said "Contracts of Insurance are contracts in which .....fides is required not only from the assured but also from the company insuring." The National Insurance Company Ltd., the Appellants have not, in my view, exercised that utmost good faith. There are so many clauses in the Cover Note, that, were they brought to attention of the respondent at the time he executed the proposal, he would, I am sure, have been more careful before entering into the contract. The lack of the utmost good faith on the part of the Appellants is compounded by the date of issue of the Cover Note which was 2nd December, 1996.

In the above case which I have mentioned, the Learned Lord Justice Farwell had this to say:-

> "It is the universal practice for the companies to prepare both the forms of proposal and the form of policy. Both are issued by them on printed forms kept by them ready for use; it is their duty to make policy accord with and not exceed h the proposal and to express both in clear and unambiguous terms." Fletcher Moulton L. J. says, quoting Lord St. Leonards in Joel v. Law Union and Crown Insurance Co. 2 (1908) K. B. at 896 provision should not be introduced into policies which number of persons to suppose that they have made provision for their families by an insurance on their

> lives, and by payment of perhaps a very considerable part of their income when in point of fact from the very commencement the policy was not worth the paper on which it has written."
>
> In the instant case, the Appellant's prepared and issued the proposal and a third party prepared and issued the Cover Note. This, in my view, is a deliberate attempt to escape liability from the risk proposed.

In my opinion, this is exactly what has happened in the instant case. The respondent was led from the commencement of the transaction that he was insuring the full value of his merchandise, when in fact that was not the case. Exh. "A" said "Overseas Insurance (Fire and burglary). What did that phrase mean? Not much - I have already opined that that transaction was not worth the paper it was written on.

The Learned Justice continued "It is especially incumbent on insurance companies to made it clear both in their proposal forms and the policies the conditions which are precedent to their liability to pay .....

Accordingly, it has been established the doctrine that policies are to be construed contra proferentes applies strongly against the company". It has been urged on the Court that the assured is bound by provisions in the Cover Note. If the Court were to accept that submission, then the proposal form should have stated so clearly that the terms and conditions on the Cover Note were to be incorporated in the proposal. This is not so, I therefore do not accept this submission. More will be addressed on the Cover Note later in this judgment. In any case it is my view that even if the proposal were to be incorporated in the Cover Note, I will on construction of the two documents read together give effect to the proposal as overriding the Cover Note where they defer.

In the words of the Learned Justice, "tens of thousands of small shop keepers with one assistant, boarding house keepers and others with one "general", small farmers, tenants of small - holdings and the like are driven to insure. They receive a printed form of proposal and it is reasonable to assume some and do assume in most cases with careful perusal of the document, to accord with the proposal form. It is, in my opinion incumbent on the company to put clearly on the proposal form the acts which the assured is by the policy to covenant to perform and to make clear in the policy the conditions." I entirely agree with the

views expressed by the Leaned Justice and I adopt them and apply them in the instant case.

What then is the position of the Cover Note Ex. B. vis-a-vis the respondent.

The Respondent is not privy to the Cover Note. I have already said that the appellants did not exercise the utmost good faith in their dealings with the respondent. I will repeat the clause which the Appellants sought to invoke in order to avoid liability.

"WAR AND CIVIL WAR EXCLUSION CLAUSE"

(Approved by Lloyd's Underwriters Non Marine association)
not withstanding anything to the contrary contained herein this policy does not cover loss or damage directly or indirectly occasioned by, half penalty through or in indirectly occasioned by happening through or in consequence of warm invasion, acts of foreign enemies, hostilities (whether was be declared or not) civil war, rebellion, revolution insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local
authority."

In my view, this exclusion clause is so comprehensive that if it were incorporated in the proposal form, the Appellants would have been hard put to convince the Court that it was reasonable to escape liability. Counsel for the Appellants has argued forcefully that the Respondent is bound by the exclusion clause. He has referred to the case of Spinney's v. Royal Insurance to support his argument; even if the Court were to be attracted by such argument, it was the duty of the Appellants to prove the facts that one or other of the several incidents occurred to enable them to invoke such exclusion clause. In my view, the Cover Note, that is the reinsurance document cannot be read together with the proposal document. If the exclusion was one of the so called usual clauses such as the so called continuation clause or the "warehouse to warehouse clause" one can safely consider it to be incorporated in an reinsurance policy in the usual form, if it is not inconsistent with its express term vide (Joyce v. Realm Marine Insurance Co. (1872) L.R. 7Q.B. 530.

The original contract of insurance and the contract of reinsurance are two distinct contracts, and the reassured remains solely liable on the original insurance, and alone has any claim against the reinsurer.

The Learned trial Judge in addressing the issues before him had this to say: "The issues I have to consider in this case are as follows:-

1. The existence or non-existence of a contract of Insurance between the plaintiff and the defendant company.

2. The effect of the re-insurance on the contract of Insurance, if any between the plaintiff and defendant.

3. Whether or not the plaintiff is bound by the exclusion clause in the Cover Note

issued by the re-insurance.

4. The peril insured against."

In addressing the issues under 2 and 3, the Learned Judge had this to say. "What is disputed is the effect this contract of reinsurance has or the contract of insurance between the plaintiff and the defendants.....

.....

Where no policy has been issued to the proposer before the loss as in this case the receipt of the premium and its retention by the insurers, though by no means conclusive, raises the presumption, in the absence of any circumstances to the contrary, that the defendants have definitely accepted the proposals of the plaintiff. The defendants are not entitled to refuse to issue a policy to the plaintiff, and they are therefore liable to him in the event of a loss....." The defendants, the Insurers cannot depart from the acceptance of the plaintiffs, the insured's proposals by attempting to introduce fresh terms into the policy. The assured is entitled to insist upon a policy. The assured is entitled to insist upon a policy in the very terms of the proposals". I entirely agree with the Learned Trial Judge.

However, the Learned trial Judge went on to say: "I hold that the proposal and receipt constitute one single transaction". I agree. Then the trial Judge referred to the Cover Note Ex. "B" in these words "The Cover Note Ex. B is itself a contract of insurance. . .. . It sets out its terms certifying that the Insurance has been effected. That insurance is subject

to War and Civil War Exclusion Clause (N M A) 464 I hold that the insured is bound by the terms and conditions in the Cover Note Ex. B The peril against is Fire, Burglary and Thift I do not, with respect, subscribe to the findings of the Learned Trial Judge. It seems to me that the Judge was approbating and reprobating at the same time..

Having made these findings the Learned trial Judge reviewed the evidence vis-avis the war and civil exclusion clause in Ex. B. the Cover Note and said "The burden of proving that the loss was caused by an excepted peril lies upon the insurers. . . . . .
. . .. The insurers must produce affirmative evidence of facts supporting their contention and such evidence must be sufficient. If they fail to produce such evidence, they have not discharged the onus of proof, and the assured accordingly succeeds in his claim."

The Judge has stated the law correctly but this is on the assumption that the plaintiff is bound by the terms and conditions in the Cover Note., Ex. B.

In my view, the plaintiff / Respondent is not a party to the contract of Reinsurance and is not bound by the terms and conditions in the Cover Note Ex. "B".

The Learned Trial Judge finally said "I hold that the defendants cannot avail themselves of the exclusion clause. His claim however should be limited to U.S.D. 20,000."

In my opinion there is no basis for limiting the claim to USD20,000. The Learned trial Judge has awarded interest at the rate of 12% from 26th November 1997 to the date of this judgment, with respect, the Judge has not adduced any reason for making the award.
I will now address the issue of interest whether the Respondent is entitled to interest and on what basis.

Our Courts are guided by the provision in Section 4 (1) of Cap.19 Law Reform (Miscellaneous Provisions Act) which states:

> "In any proceedings tried in any Court of record for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the Judgment.

Provided .....

a. .....

b. .....

c. .....

Having spelt out the law, what is the claim of the plaintiff / respondent, the claim of the plaintiff / respondent is: "Interest on the said sum of USD 40,000 at such rate as the Court thinks fit from the 21st day of May 1997 to the date of Judgment." I must bear in mind that the interest being claimed is on a foreign currency. In my view, an insurance claim is a debt which must of necessity attract interest at a rate which the Court thinks reasonable. I am strengthened in my view by the words in S.4 (1) mentioned above "any debt or damages.' In support of my opinion I will refer to the case of Aldora, Tyne Tugs Ltd. and another v. The owners of the motor vessel Aldora (1975) 2 A.E.R. 69 at 73.

In that case, the plaintiffs, the owners, masters and Crews of four tugs and a pilot rendered

salvage services to the defendant's vessel which had gone a ground at the entrance of a habour. Those services were not provided under any special form of salvage agreement. In proceedings in the Admiralty Court the plaintiffs were awarded various sums in respect of the salvage services. The question arose whether the plaintiffs were entitled to interest on the awards under S.3.

(1)a of the law reform (Miscellaneous Provisions Act 1934 or otherwise for the period from the date of the services to judgment. Held the plaintiffs were entitled to interest for the following reasons -

(1) Although the plaintiffs claim for remuneration arise under Maritime Law independently of either contract or statutes, it was nevertheless to be treated as a claim for the recovery of (a) debt within S.3 (1) of 1934 Act and accordingly the Court had power to award interest under S.3 (1).

Brandon J. in his judgment had this to say after he made several awards to the various plaintiffs:

"It remains to consider the question whether the plaintiffs should have

interest on the awards for the whole or any part of the period from the date of the services to Judgment.....

.....

the Judge went on to quote S.3 of the Act of 1934,
This section is ipsisima verba S.4 (1) of our own Act — Cap. 19.

In the words of the Learned Judge, "I have strong support for my opinion that claim for insurance is a debt." I quote Brandon J.: "The question which has to be decided therefore, is whether a claim for salvage is a proceeding.. ... ..for the recovery of any debt or damages within the meaning of this subsection or not.

I do not think that a claim for salvage is a proceeding for the recovery of damages and the question is accordingly reduced to this: Whether it is a proceeding for the recovery of a debt. As to this, it is to be observed that the words used are "any debt, indicating that the net is being spread as widely as possible. These words are it seems to me apt to cover sums, whether liquidated or unliquidated, which a person is obliged to pay either under a contract, expenses or implied, or under a statute."
The Judge's view and mine are identical and I shall soon consider what interest I consider appropriate to award.

In view of what I have said supra. I find that the respondent is not bound by the terms and conditions in the Cover Note Ex.B.

Ground 1 of the Grounds of Appeal fails and is dismissed

Ground 2: there was no affirmative evidence to support this ground, and as a result of the finding on ground 1. Ground 2 also fails and is dismissed.

Ground 3. There is no merit in this ground of appeal and it also fails and is dismissed.

Ground 4. was abandoned and is accordingly dismissed.

Ground 5. There is no merit in this ground and is accordingly dismissed.

The proceedings before the Court of Appeal is a rehearing, bearing in my mind that the views and findings of the Learned trial Judge will be respected.

Be that as it may, I will vary the award of USD 20,000 to USD 40,000.

1. I Order that the Appellants' shall pay the Respondent the sum of USD 40,000 being insurance claim.
2. I further order that Appellants shall pay the Respondent interest at the rate of 12% per annum from the date of the Judgment delivered on the 7th day of April 2000.
3. The appellants shall pay the costs occasioned by this appeal and the costs below to the Respondent.

Sydney Warne

Justice of the Supreme Court.

I agree.....M.E.T. Thompson — Justice of Appeal

I agree.....A,B, Raschid — High Court Judge